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| 10/075,020 | 02/12/2002 | Bryan L. Ackerman | J 2961A | 8089 |
| 28165 7590 02/08/2005 | | | | |
| S.C. JOHNSON & SON, INC. 1525 HOWE STREET RACINE, WI 53403-2236 | | | | |
| EXAMINER | | | | |
| CHEVALIER, ALICIA ANN | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 1772 | | | | |

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/075,020

Applicant(s)

ACKERMAN ET AL.

Examiner

Alicia Chevalier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-70 and 72-83 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-70 and 72-83 is/are rejected.
- 7) ☐ Claim(s). _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/15/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

RESPONSE TO AMENDMENT

Request for Continued Examination

1. The Request for Continued Examination (RCE) under 37 CFR 1.53 (d) filed on November 15, 2004 is acceptable and a RCE has been established. An action on the RCE follows.
2. Claims 1-70 and 72-83 are pending in the application, claim 71 has been cancelled.
3. Amendments to the claims, filed on November 15, 2004, have been entered in the above-identified application.

WITHDRAWN REJECTIONS

4. The 35 U.S.C. §102 and §103 rejections made of record in the office action mailed July 13, 2004, pages 2-10, paragraphs #3-10 have been withdrawn due to Applicant's amendment in filed November 15, 2004.

NEW REJECTIONS

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

6. Claims 1-5, 10-16, 25, 26, 33-37, 42-48, 57, 70, 72, 73 and 77 are rejected under 35 U.S.C. 102(b) as being anticipated by Pearlstein (U.S. Patent No. 5,709,879).

Regarding Applicant's claim 1, Pearlstein discloses a single use processing substrate (*absorbent packaging, title*) comprising a first layer (*tab, col. 7, line 17*) and a second layer (*panel, col. 7, line 19*). The first layer is deemed to have a first surface area and includes a cellulosic ply (*absorbent layer, col. 6, line 67 and col. 5, line 47*) and a thermoplastic ply (*apertured film, col. 6, line 67*). The second layer is deemed to have a second surface area and includes a cellulosic ply (*absorbent layer, col. 6, line 67 and col. 5, line 47*) and a thermoplastic material ply (*film of polyethylene, col. 7, line 4*). As can be seen from figure 9 in Pearlstein the first layer is secured to the second layer such that a portion of the second surface is laterally disposed outside of the first surface area and wherein the portion of the second surface area includes sections of the thermoplastic ply and the cellulosic ply.

Regarding Applicant's claim 33, Pearlstein discloses a single use processing substrate (*absorbent packaging, title*) comprising a first layer (*tab, col. 7, line 17*) and an unfolded second layer (*panel, col. 7, line 19*). The first layer is deemed to have a first surface area and includes a tissue ply (*absorbent layer, col. 6, line 67 and col. 5, line 47*) below a thermoplastic ply (*apertured film, col. 6, line 67*). The second layer is deemed to have a second surface area and includes a tissue ply (*absorbent layer, col. 6, line 67 and col. 5, line 47*) above a thermoplastic material ply (*film of polyethylene, col. 7, line 4*). As can be seen from figure 9 in Pearlstein the first layer is secured to the second layer such that a portion of the second surface is laterally disposed outside of the first surface area and wherein the portion of the second surface area includes sections of the thermoplastic ply and the cellulosic ply.

Regarding Applicant's claim 70, Pearlstein discloses a single use processing substrate (*absorbent packaging, title*) comprising a cut resistant portion (*tab, col. 7, line 17*), an absorbent

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portion and a barrier portion (*panel, col. 7, line 19, absorbent layer, col. 6, line 67 and col. 5, line 47, film of polyethylene, col. 7, line 4*). The cut resistant portion is deemed to have a first surface area. The absorbent portion disposed adjacent the cut resistant portion and having a second surface area. The barrier portion disposed adjacent the absorbent portion (*figure 6 and 9*). As can be seen from figure 9 in Pearlstein the cut resistant portion, the absorbent portion, and the barrier portion are secured to one another such that a section of the second surface is laterally disposed outside of the first surface area and wherein the cut resistant portion includes a plurality of apertures therein.

Regarding Applicant's claims 2 and 34, Pearlstein discloses that the first layer cellulosic ply is disposed below the first thermoplastic material ply (*figures 6 and 9*).

Regarding Applicant's claims 3 and 35, the limitation "wherein the first layer thermoplastic material ply is extrusion coated onto the first layer cellulosic ply" is a method limitation and does not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the claimed method because Pearlstein discloses a first layer thermoplastic layer on top of the first layer cellulosic ply.

Regarding Applicant's claims 4 and 36, Pearlstein discloses that the second layer cellulosic ply is disposed above the second thermoplastic material ply (*figures 6 and 9*).

Regarding Applicant's claims 5 and 37, the limitation "wherein the second layer thermoplastic material ply is extrusion coated onto the second layer cellulosic ply" is a method limitation and does not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the claimed method because Pearlstein discloses a second layer thermoplastic layer on the second layer cellulosic ply.

Regarding Applicant's claims 10 and 42, Pearlstein discloses that the first layer thermoplastic ply and the first layer cellulosic ply include a plurality of apertures therein (*col. 6, line 67 and figure 6*).

Regarding Applicant's claims 11, 12, 43, 44, 72 and 73 the limitations "wherein the apertures are created by perforating" and "wherein the apertures are created by punching" are method limitations and do not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113. Furthermore, there does not appear to be a difference between the prior art structure and the structure resulting from the claimed method because Pearlstein discloses the first layer thermoplastic ply and the first layer cellulosic ply include a plurality of apertures.

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Regarding Applicant's claims 13 and 45, Pearlstein discloses that the first layer thermoplastic ply and first layer cellulosic ply contain an average of 552 apertured per square inch (*col. 5, lines 41-43*).

Regarding Applicant's claims 14 and 46, Pearlstein discloses that the apertures are substantially circular (*figure 6*).

Regarding Applicant's claims 15 and 47, Pearlstein discloses that the apertures have a diameter of about 0.08 inches (*col. 5, lines 35-40*).

Regarding Applicant's claims 16 and 48, the apertures are deemed to be regularly spaced (*figure 6*).

Regarding Applicant's claims 25, 26, and 57, Pearlstein discloses the first layer is substantially centered in the second surface in both direction (*figure 9*).

Regarding Applicant's claim 77, Pearlstein discloses the barrier layer has a third surface area equal to the second surface area (*figure 9*).

Claim Rejections - 35 USC § 103

7. Claims 6-9, 17, 18, 28, 29, 38-41, 49, 50, 59, 60 and 78-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearlstein as applied above.

Pearlstein is relied upon as described above.

Pearlstein fails to disclose that the thickness of the first or second cellulosic ply, the thickness of the thermoplastic plies, the spacing of the apertures and the dimensions of the plies.

Pearlstein further discloses that the thickness of the cellulosic plies (*absorbent pad/layer*) may vary depending upon the food product contained in the package, the tray depth, and the nature of the fluids extruded (*col. 6, lines 1-3*).

Therefore, the exact thickness of the cellulosic plies is deemed to be a result effective variable with regard to the food product contained in the package, the tray depth, and the nature of the fluids extruded. It would require routine experimentation to determine the optimum value of a result effective variable, such as thickness of the cellulosic plies, in the absence of a showing of criticality in the claimed thickness. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990).

The exact thickness first and second thermoplastic material plies is deemed to be a result effective variable with regard to the protective properties of the plies of the absorbent layers. It would have been obvious to one having ordinary skill in the art to have determined the optimum value of a result effective variable such as thickness of the thermoplastic material layers through routine experimentation in the absence of a showing of criticality in the claimed combined thickness. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill in the art would be motivated to optimize the thickness of the thermoplastic layers in order to prevent the absorbent core from being damaged.

The exact aperture spacing is deemed to be a result effective variable with regard to the fluid passage rate to the absorbent layers. It would have been obvious to one having ordinary skill in the art to have determined the optimum value of a result effective variable such as aperture spacing through routine experimentation in the absence of a showing of criticality in the claimed combined spacing. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16

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USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill in the art would be motivated to optimize the space in order to optimize the fluid passage rate to the absorbent layer in order to avoid leakage.

The exact dimensions of the layers is deemed to be a result effective variable with regard to the size of the item to be packaged. It would have been obvious to one having ordinary skill in the art to have determined the optimum value of a result effective variable such as dimensions of the layers through routine experimentation in the absence of a showing of criticality in the claimed combined dimensions. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill in the art would be motivated to optimize the dimensions of the layers in order to accommodate the size of the item to be packaged.

8. Claims 19-24, 51-56 and 74-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearlstein in view of Tanizaki et al (U.S. Patent No. 5,998,039).

Pearlstein is relied upon as described above.

Pearlstein fails to disclose the claimed resin composition of the first and second thermoplastic plies.

Tanizaki discloses a polypropylene composition employed particularly in the field of food packaging because of their excellent mechanical properties such as tensile strength, rigidity, surface hardness, impact resistance and cold temperature resistance, optical properties such as glossiness and transparency, and food hygienic properties such as nontoxicity and odorless properties (*col. 1, lines 32-45*). The polypropylene composition includes a resin comprising metallocene polypropylene (*col. 5, lines 35-39*) comprising a copolymer of propylene and ethylene (*col. 6, lines 1-4*). The resin further includes talc additive in an amount less than about

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10 percent by weight of the resin (*col. 29, lines 44-46*), calcium, magnesium (*col. 26, lines 35-48*) and an antioxidant (*col. 24, line 43 to col. 25, line 53*).

It would have been obvious to use the polypropylene composition of Tanizaki as the thermoplastic material of the first and second thermoplastic layers in Pearlstein because of the excellent mechanical properties such as tensile strength, rigidity, surface hardness, impact resistance and cold temperature resistance, optical properties such as glossiness and transparency, and food hygienic properties such as nontoxicity and odorless properties of Tanizaki's composition.

9. Claims 27 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearlstein in view of Phillips (U.S. Patent No. 5,414,248).

Pearlstein is relied upon as described above.

Pearlstein fails to disclose the first surface area and the portion of the second surface area laterally disposed outside of the first surface area are embossed.

Phillips discloses a grease and moisture absorbing insert for use in food containers (*col. 2, line 63 to col. 3, line 7*). The insert comprises a first layer with a plurality of holes, an absorbent layer and a bottom layer (*figures 1 and 2*). The layers can be bonded together using thermal embossing techniques to secure the absorbent layer while at the same time still allowing the apertures in the film provide good fluid penetration (*col. 11, lines 18-25*).

It would have been obvious to one of ordinary skill in the art at the time of the invention to thermal emboss as taught by Phillips the first surface area and the portion of the second surface area laterally disposed outside of the first surface area of Pearlstein because of the good bonding achieved will still maintaining good fluid penetration.

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10. Claims 30, 31, 32 and 61-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearlstein in view of Komatsu et al. (U.S. Patent No. 4,657,133) and evidenced by Incorvia et al. (U.S. Patent No. 6,103,141).

Pearlstein is relied upon as described above.

Pearlstein fails to disclose the different claimed patterns of applying the adhesive and adhesive composition.

Komatsu discloses a food packaging material (*col. 1, lines 11-22*) in which the layers are adhesively bond together, wherein the adhesive is applied in a patter such as a grid pattern to assure gas permeability (*col. 4, lines 16-19*).

It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the adhesive of Pearlstein in a grid pattern as taught by Komatsu because it would assure gad permeability as well as liquid permeability through the top layer to the absorbent core.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use ethyl vinyl acetate adhesive, since it have been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. As evidenced by Incorvia, which discloses ethyl vinyl acetate as typical adhesive used in food packaging materials (*col. 1, lines 16-20 and col. 4, lines 21-31*).

ANSWERS TO APPLICANT'S ARGUMENTS

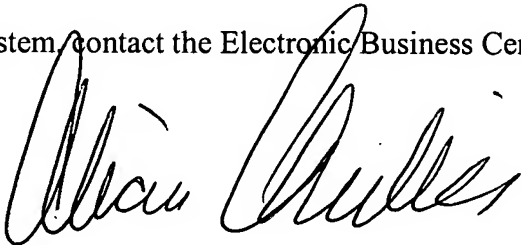
11. Applicant's arguments in the response filed November 15, 2004 regarding the previous rejection of record have been considered but are moot since the rejections have been withdrawn.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Alicia Chevalier', is written over the text of the previous paragraph.

Alicia Chevalier

2/6/05